IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.37900 of 2007
BINOD KUMAR MOTANI @ BINOD MOTANI, S/O LATE RAM NIWAS PRASAD, RESIDENT OF MOHALLA MILL ROAD, KHAGARIA, P.S. & DISTRICT-KHAGARIA……..PETITIONER.

Versus

THE STATE OF BIHAR……OPPOSITE PARTY.

For the Petitioner : Mr. S.D. Sanjay, Advocate.
For the State : Mr. Jharkhandi Upadhyay, A.P.P.

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3. 3.12.2008. The petitioner, one of the F.I.R. named accused of Khagaria P.S. Case No.31 of 2007, has prayed for the quashing of the order dated 2.5.2007 passed therein by the learned Chief Judicial Magistrate, Khagaria, whereby he has taken cognizance under Section 414 I.P.C. and Section 7 of the Essential Commodities Act(hereinafter referred to as "the E.C. Act").

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According to the prosecution case, in course of a raid on the godown premises of the petitioner at about 10.45 P.M. on 20.1.2007 by some police personnel vanaspati was found being unloaded and the same was seized alleging that the said vanaspati was Nepali dalda. Accordingly, on the fardbeyan given by a constable the aforesaid case came to be registered and on submission of chargesheet cognizance, as stated above, was taken.

For the reasons stated hereinbelow, the instant application has to be allowed and the impugned order, so far as the petitioner is concerned, has to be quashed.

Due to the failure of the State Government to fix storage

limits and specify classes to the cities, this Court in a catena of decisions had occasion to hold that the Bihar Trade Articles (Licences Unification) Order, 1984(hereinafter referred to as "the Unification Order") in relation to edible oil is not workable/enforceable in Bihar and in the eye of law. Subsequently, by a notification in July, 2003, the State Government deleted edible oil , food grains etc. from the provisions of the Unification Order and as such there is no restriction on purchase, possession or sale of edible oil including Hydrogenated vegetable oil in Bihar

Similarly Section 414 I.P.C. would not apply as there was nothing to show that the vanaspati seized was stolen property. In the absence of the said vanaspati having been reported to have been stolen, the petitioner cannot be held liable for an offence under Section 414 I.P.C.

(Abhijit Sinha,J)

P.S.

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